

James G. Abourezk

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January 18, 2005

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF SOUTH DAKOTA</p> <p>3 SOUTHERN DIVISION</p> <p>4 *****</p> <p>5 James G. Abourezk,</p> <p>6 Plaintiff,</p> <p>7 -vs-</p> <p>8 ProBush.com, Inc., a Pennsylvania</p> <p>9 corporation, and Michael Marino,</p> <p>10 an individual,</p> <p>11 Defendant.</p> <p>12 Johnson, Heidepriem, Miner,</p> <p>13 Marlow & Janklow</p> <p>14 Sioux Falls, SD</p> <p>15 January 18, 2005</p> <p>16 3:00 o'clock p.m.</p> <p>17 *****</p> <p>18 DEPOSITION OF</p> <p>19 James G. Abourezk</p> <p>20 *****</p> <p>21 APPEARANCES:</p> <p>22 Mr. Todd D. Epp</p> <p>23 Abourezk Law Offices</p> <p>24 Box 1164</p> <p>25 Sioux Falls, SD 57101-1164</p> <p>for the Plaintiff</p> <p>Mr. Ronald Parsons</p> <p>Ms. Kimberly J. Lanham</p> <p>Johnson, Heidepriem, Miner, Marlow & Janklow</p> <p>P.O. Box 1107</p> <p>Sioux Falls, SD 57101-1107</p> <p>for the Defendants</p> <p>ALSO PRESENT: Michael Marino</p> <p>Ben Marino</p>	<p>1 Exhibit 10</p> <p>2 (Article by James Abourezk, "Questioning Bush's</p> <p>3 Policies a not Unpatriotic")</p> <p>4 Exhibit 11</p> <p>5 (Article by James Abourezk, "We can beat Iraq,</p> <p>6 but what for?")</p> <p>7 Exhibit 12</p> <p>8 (Press announcement about Iraq visit by</p> <p>9 Institute for Public Accuracy)</p> <p>10 Exhibit 13</p> <p>11 (E-mail from Todd Epp to Team Leader, 4-10-03)</p> <p>12 Exhibit 14</p> <p>13 (Letter to Michael Marino from Todd Epp,</p> <p>14 5-8-03)</p> <p>15 Exhibit 15</p> <p>16 (9-16-02 article on Democracy Now)</p> <p>17 Exhibit 16</p> <p>18 (Article on Lebanonwire.com, 6-14-02)</p> <p>19 Exhibit 17</p> <p>20 (Article in Institute for Public Accuracy,</p> <p>21 9-10-02)</p> <p>22 Exhibit 18</p> <p>23 (James Abourezk's Congressional biography)</p> <p>24 Exhibit 19</p> <p>25 (Remarks to RAUG Annual Convention, James</p> <p>Abourezk, 10-19-96)</p> <p>Exhibit 20</p> <p>(Article by James Abourezk in Progressive Media</p> <p>Project, 9-23-02)</p> <p>Exhibit 21</p> <p>(BookFinder.com, Imperial Washington: The Story</p> <p>of American Public Life from 1870 to 1920, by</p> <p>F.R. Pettigrew)</p> <p>Exhibit 22</p> <p>(Living Vegetarian, list of Politicians,</p> <p>Statespersons and Activists)</p>
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<p>1 INDEX TO WITNESS</p> <p>2 Examination</p> <p>3 BY Mr. Parsons p. 5</p> <p>4</p> <p>5</p> <p>6</p> <p>7 INDEX TO EXHIBITS</p> <p>8 Marked for Offered for</p> <p>9 Identification Evidence</p> <p>10 Exhibit 1</p> <p>11 (Verified Complaint)</p> <p>12 Exhibit 2</p> <p>13 (Affidavit of James G. Abourezk)</p> <p>14 Exhibit 3</p> <p>15 (Affidavit of Todd D. Epp)</p> <p>16 Exhibit 4</p> <p>17 (Opening page of ProBush.com's website)</p> <p>18 Exhibit 5</p> <p>19 (Patriot List)</p> <p>20 Exhibit 6</p> <p>21 (Traitor List)</p> <p>22 Exhibit 7</p> <p>23 (Not In Our Name Petition)</p> <p>24 Exhibit 8</p> <p>25 (Article in Progressive Newsware on Opposition</p> <p>to Bush Administration's Plans to Invade Iraq)</p> <p>Exhibit 9</p> <p>(Article by James Abourezk, "Questioning</p> <p>President's Policies is not Unpatriotic")</p>	<p>1 Exhibit 23</p> <p>2 (Public Campaign's National Advisory Board</p> <p>3 list)</p> <p>4 Exhibit 24</p> <p>5 (Article by James Abourezk, "I'll Hold My Nose</p> <p>6 With One Hand and Vote for Clinton With the</p> <p>7 Other")</p> <p>8 Exhibit 25</p> <p>9 (Article by Sheldon Sunness, "A Talk with the</p> <p>10 Lonely Man.")</p> <p>11 Exhibit 26</p> <p>12 (Excerpts from Advise & Dissent, by James</p> <p>13 Abourezk)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 *****</p> <p>24 The original transcript of this deposition was</p> <p>25 given to Mr. Parsons</p>

EXHIBIT

A

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STIPULATION

It is stipulated and agreed by and between the above-named parties, through their attorneys of record, whose appearances have been hereinabove noted, that the deposition of James G. Abourezk may be taken at this time and place, that is, at the offices of Johnson, Heidepriem, Miner, Marlow & Janklow, Sioux Falls, South Dakota, on the 18th day of January, 2005, commencing at the hour of 3:00 o'clock p.m.; said deposition taken before Jill M. Connelly, Notary Public within and for the State of South Dakota; said deposition taken for the purpose of discovery or for use at trial or for each of said purposes, and said deposition is taken in accordance with the applicable Rules of Civil Procedure as if taken pursuant to written notice.

JAMES ABOUREZK,

called as a witness, being first duly sworn, testified as follows:

EXAMINATION BY MR. PARSONS:

Q. Would you state your name, please?

A. James Abourezk.

Q. Senator Abourezk, is it okay if I call you Jim?

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A. That's better, yes.

Q. Why don't you tell me how you first became aware of the ProBush.com website.

A. I think somebody out in New England sent me an e-mail, somebody I knew out there. I'm trying to remember exactly who it was. I think it was a guy from New Hampshire who told me about it, but my memory is not that good on exactly who told me.

Q. Did you then personally go and look at the website?

A. I did.

Q. Tell me if you recall what you saw.

A. Well, I saw a list and photographs of people who were defined as traitors to the United States.

Q. Did you see your own name on there?

A. I did.

Q. Did you see the names of other celebrities?

A. When you say "other celebrities," you're assuming I'm one?

Q. Or public figures or prominent people.

A. Yes, I did.

Q. What was your reaction to the website when you saw it?

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A. Well, I was angered, outraged, surprised.

Q. And tell me why.

A. I guess it's not my place to ask questions, but I would just ask you, how would you feel if somebody called you a traitor of the United States? That's the real answer.

Q. Did you understand the website to be asserting that you had committed treason against the United States Government?

A. Well, I understood the website to have called me a traitor to the United States Government, yes, the United States. That's what I understood.

Q. When you saw the website, did you believe that all of the people listed on the Traitor List were being labeled as traitors to the United States?

A. I understood that, yes.

Q. Did you believe it was true that they were?

A. I didn't believe any of them were traitors, to my knowledge.

Q. Did you construe any political commentary in the website? I mean did you view it all as political commentary?

A. Well, I viewed some of it as political

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commentary, some of it as hawking products, like Bush dolls or some things like that.

Q. What about the Traitor List itself? Did you consider that at all to be a political statement by the website?

A. I considered it to be an allegation, a charge that I was a traitor to the United States. That's what I considered it to be.

Q. When you went on the website, did you see the disclaimer?

A. I did not. Only much later when I checked it again, much later.

Q. Do you remember when it was that you first saw the website time wise?

A. I can't give you the exact time. I think it was April of whatever year it was. What year was that? Do you remember?

Q. 2002.

A. Yes.

Q. I think that's right. In I think late April of 2002 your attorney, Mr. Epp, wrote some letters to ProBush.com, I think an e-mail, and maybe a letter in May, that referred to the disclaimer. So would it be fair to say that you had at least seen the disclaimer by that

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Page 11

1 point?

2 A. I couldn't tell you what date I saw it. It was

3 much later than the first time I looked at it.

4 Q. Okay. Do you remember what the disclaimer said

5 when you saw it?

6 A. I'm going to take a guess. I think it said,

7 "This is a parody." If there were other

8 words, I don't remember what they were.

9 Q. Okay.

10 MR. EPP: Ron, for the record, I believe

11 it's 2003, not 2002. Look at Exhibit 13, I

12 believe my first e-mail to someone called Team

13 Leader at ProBush.com, stamped April 10, 2003.

14 MR. PARSON: Okay.

15 A. That makes sense, because I think it was after

16 the Iraq war started, wasn't it?

17 Q. Okay. So do you recall, does this refresh your

18 recollection, did you first see the website in

19 2003 or 2002?

20 A. Well, I think it was 2003.

21 MR. EPP: That's my recollection.

22 MR. PARSON: All right. Sorry about

23 that. I'm confused on the year then.

24 Q. Was it 2003 when we invaded?

25 A. Yes.

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1 Q. Okay. Do you remember where the disclaimer was

2 when you saw it?

3 A. I don't. It was on the website when I saw it,

4 but I don't remember where.

5 Q. Did you see the Patriot List that was on the

6 website?

7 A. I don't recall if it was there. I may have,

8 but I can't recall.

9 Q. Tell me then what happened after you saw the

10 website. What actions then did you take

11 following that?

12 A. Well, I retained an attorney.

13 Q. Mr. Epp?

14 A. Mr. Epp.

15 Q. And he sent some correspondence?

16 A. Yeah, I guess so.

17 Q. Is that something you reviewed before it was

18 sent?

19 A. I don't remember if I did or not. I most

20 likely would have, but I can't recall.

21 Q. In your Complaint, which is marked Exhibit 1,

22 on the second page, No. 8 says, "Treason is a

23 felony under federal law, 18 USCA 2381, and

24 South Dakota law, SDCL 22-8-1." Do you recall,

25 were those statutes referenced anywhere on the

1 website?

2 A. If they were, I don't recall.

3 Q. How is it you concluded calling someone a

4 traitor in the context you saw it meant that

5 you were being accused of violating either

6 federal or state criminal statutes?

7 A. It stands to reason if you're accused of being

8 a traitor, which is a felony, that means you've

9 committed treason. That's a felony. I don't

10 know what more to say about that.

11 Q. Okay. Would you agree the word "traitor" could

12 have several different meanings and in

13 different contexts?

14 A. No.

15 Q. Have you ever heard someone called a traitor

16 for doing or saying something that was not

17 necessarily a crime against their country?

18 A. I don't know. It's possible.

19 Q. I have a copy of the dictionary, the Webster's

20 New Collegiate Dictionary. Under here, it's

21 Page 1239, there are two definitions, I think,

22 primarily of traitor. The second definition

23 is, "One who commits treason."

24 A. I can't see from that far.

25 Q. Sorry. And that's how you interpreted the word

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1 to be on the ProBush.com website?

2 A. Yes. Well, I think the language that I saw on

3 the website was anybody who -- or, "The

4 following people who disagree with George

5 Bush's policies is a traitor," words to that

6 effect, is how I read it.

7 Q. Right. The first definition actually under

8 "traitor" in this dictionary is, "One who

9 betrays another's trust or is false to an

10 obligation or duty." Have you ever heard the

11 word "traitor" used in that type of context?

12 A. I can't recall it right now, but I assume

13 that's been used that way.

14 Q. For instance, maybe if someone was on a sports

15 team and they intentionally threw the game,

16 throwing the ball out of bounds in a basketball

17 game or something like that. Their teammates

18 might call them a traitor.

19 A. They should call them a crook.

20 Q. But calling someone a crook would be accusing

21 them of a crime, as well, wouldn't it?

22 A. Yes.

23 Q. Would you consider that to be libelous?

24 A. If you called somebody a crook and they weren't

25 a crook, I think that would be libelous, if you

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1 did it in print, yes.
 2 Q. In your Complaint, numbered Paragraph 13 on
 3 Page 2, it says, "Such a statement," which is
 4 referring to the traitor statement, "is
 5 libelous per se under South Dakota law as it
 6 accuses the plaintiff of a criminal act he did
 7 not commit."
 8 "Libelous per se" has a legal meaning
 9 where if somebody is libelous per se, I believe
 10 there's a legal doctrine that says you don't
 11 necessarily have to prove specific damages.
 12 A. That's my understanding.
 13 Q. Is it your claim -- is your claim for damages
 14 based upon a libelous per se principle?
 15 A. I have to ask my attorney, if that's what my
 16 claim is based on.
 17 Q. That's acceptable.
 18 MR. EPP: I'm not answering the question.
 19 The document speaks for itself.
 20 A. The document speaks for itself.
 21 Q. All right. Have you made any claim that you've
 22 been specifically -- do you claim you've been
 23 specifically injured economically or otherwise
 24 by the ProBush.com?
 25 A. I'm not required to prove that.

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1 Q. But are you making a claim?
 2 A. That's a question I can't answer and won't
 3 answer.
 4 Q. Do you have any evidence or are you aware of
 5 any evidence that you have been specifically
 6 injured by the publication of the ProBush.com
 7 website?
 8 A. Same answer. It's a question I won't answer.
 9 Q. That I think is one I'm entitled to get an
 10 answer.
 11 A. I refuse to answer it then.
 12 Q. Let me rephrase it and see if I can make it
 13 more acceptable.
 14 Do you have any evidence that either you
 15 or your business has been specifically damaged
 16 by the ProBush.com website?
 17 A. That's something I don't have to prove.
 18 Therefore, I will not answer that question.
 19 Q. I think I'm entitled to get an answer on that.
 20 MR. EPP: Well, call the Judge.
 21 MR. PARSON: Let's not call the Judge.
 22 MR. EPP: Why don't you move on, and we
 23 can discuss this later.
 24 MR. PARSON: All right. Good idea.
 25 Q. On your damages claim in your Complaint on

1 Page 3, you're claiming actual damages in the
 2 amount of \$2 million. How was that figure
 3 arrived at?
 4 A. Well, I believe that's the amount of damages
 5 suffered by me as a result of this false
 6 allegation.
 7 Q. What is that based on? How did you arrive at
 8 \$2 million?
 9 A. I did that in consultation with my attorney,
 10 and then, of course, I don't believe we're
 11 required to divulge what our conversation was.
 12 Q. That's true. What elements may go into the
 13 calculation, though, of \$2 million?
 14 A. Same answer.
 15 Q. Is it true that \$2 million is just a number
 16 that was selected to represent the amount you
 17 believe you've been damaged per se?
 18 A. Same answer.
 19 Q. What was the answer?
 20 A. What was my answer?
 21 (The requested portion of the record was read
 22 by the reporter.)
 23 Q. I certainly don't want to know conversations
 24 between you and Mr. Epp, but I believe I'm
 25 entitled to know how you calculated your

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1 damages. If it is simply an amount that is
 2 selected to represent a libel, per se, judgment
 3 you believe you're entitled to, then I accept
 4 that as your answer if that's your answer. But
 5 if there are economic calculations that went
 6 into arriving at this figure, I believe I'm
 7 entitled to know what those are.
 8 A. Same answer. It's done in consultation with my
 9 attorney, and that's the answer.
 10 MR. EPP: I'll state an objection on the
 11 record that this is attorney-client privileged
 12 information. That will be an ongoing objection
 13 on that line.
 14 Q. Is it your position that your calculation of
 15 damages is attorney-client privilege?
 16 A. Our discussions in calculating damages is
 17 privileged.
 18 Q. I'm not asking to know your discussions. I'm
 19 asking to know how your damages have been
 20 calculated.
 21 A. Answering the question would be divulging the
 22 discussion my attorney and I had.
 23 MR. PARSON: You're not going to tell me
 24 how you calculated your damages?
 25 MR. EPP: My client testified it was done

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1 in an attorney-client situation, and we have
 2 made an objection that it's attorney-client
 3 privileged communication. So you can keep
 4 asking. He'll give you the same answer. Or we
 5 can move on and discuss how we want to handle
 6 these objections following the deposition.
 7 Q. Exhibit 2 is your affidavit?
 8 A. Yes.
 9 Q. Paragraph 3, and this is your signed
 10 statement.
 11 A. Yes.
 12 Q. Paragraph 3 says, "I have never been accused
 13 of, charged with, or convicted of the crime of
 14 treason by any state or by the United States of
 15 America." That's true?
 16 A. Yes.
 17 Q. Obviously. Do you believe that ProBush.com has
 18 accused you, charged you with, or convicted you
 19 of the crime of treason?
 20 A. They've charged me with being a traitor, which
 21 is a crime of treason, yes.
 22 Q. The next one is your attorney's Affidavit. It
 23 states, Paragraph 3, "On or about April 22,
 24 2003, I became aware of the ProBush.com website
 25 from my client, James G. Abourezk." That would

1 issues?
 2 A. I'm an activist on a lot of issues, some
 3 important, some not.
 4 Q. You've never been one to shy away from
 5 publicity?
 6 A. I'm very modest sometimes. Sometimes I'm not.
 7 Q. At least you've never been afraid to give your
 8 opinion when you think it's important.
 9 A. That's true, yes.
 10 Q. Would you agree you kind of have a place in
 11 society where you have a bully pulpit that not
 12 everyone, not every average American may have?
 13 A. I don't know. I can't really answer that yes
 14 or no.
 15 Q. Let's take a look at the website here. Exhibit
 16 4 is what I believe what you would see, at
 17 least as of the date this was printed, the
 18 opening page of the website.
 19 When you saw it, did you see this page or
 20 something like it, or did you go straight to
 21 the Traitor List? Did you click through some
 22 things, or do you remember?
 23 A. You know, I really don't recall to answer
 24 that. I eventually got to the Traitor List,
 25 but I don't know what I did before that.

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1 be approximately when you discovered the
 2 website, or would that refresh your
 3 recollection as to that?
 4 A. I believe I discovered it before this date, but
 5 then I discussed it with my attorney at some
 6 point after. I don't know if this is a correct
 7 date or not.
 8 Q. It states that, "Senator Abourezk as well as a
 9 number of other prominent Americans were listed
 10 on the site's Traitor List." Would you agree
 11 you are a prominent American?
 12 A. Well, I don't think that's for me to say.
 13 That's a judgment for other people.
 14 Q. Do you have any opinion on whether or not
 15 you're a prominent American?
 16 A. I don't.
 17 Q. Do you dispute that you are a public figure?
 18 A. Well --
 19 MR. EPP: Objection, calls for a legal
 20 conclusion.
 21 A. I neither admit or dispute it. That's a legal
 22 conclusion I can't make.
 23 Q. Do you believe you're famous?
 24 A. I don't think I'm famous, no.
 25 Q. Do you believe you are an activist on important

1 MR. EPP: Ron, in asserting this, this is
 2 what you believe Senator Abourezk saw the first
 3 time he viewed the site?
 4 MR. PARSON: No.
 5 MR. EPP: The date stamp, at least when
 6 this was printed out, apparently is June 27,
 7 2003, and there's a mention on the first page
 8 to donate to ProBush.com's legal battle.
 9 Apparently part of it's concerning James
 10 Abourezk. So this would come sometime, I'm
 11 assuming sometime after the first publication
 12 of the website?
 13 MR. PARSON: That's correct, yes. Not
 14 asserting that this is definitely and obviously
 15 not exactly what was there when he first saw
 16 it, although some of this is kind of permanent
 17 content that may have been very similar in
 18 structure.
 19 Q. The next one is what's called the Patriot
 20 List.
 21 A. Is that No. 5?
 22 Q. No. 5, Exhibit 5. Do you remember looking
 23 through this?
 24 A. You know, I don't remember seeing this ever. I
 25 see Bill O'Reilly and Ann Coulter on it and

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1 Rush Limbaugh.
 2 Q. Does it appear to you these are generally
 3 Americans or others of a Republican or
 4 conservative point of view, a right point of
 5 view?
 6 A. Well, some of the names I recognize as
 7 conservative, what you'd call conservative.
 8 Rush Limbaugh is also a drug addict, on top of
 9 being a conservative.
 10 MR. EPP: Ron, I have a question on
 11 Exhibit 5, the first page. There's a number of
 12 things blacked out. What's been excised?
 13 MR. PARSON: I blacked those out when I
 14 filed this. People can request to be on the
 15 list, and these are just names that --
 16 THE WITNESS: They're supposed to be in
 17 the Patriot List?
 18 MR. PARSONS: Yeah.
 19 MR. EPP: So this is not a true and
 20 correct copy of that website?
 21 MR. PARSON: That's right. Not purporting
 22 to be, although what is here is on the website,
 23 but there are things blacked out. These were
 24 names of people who are not famous, I would
 25 say.

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1 Q. On the Traitor List then, as I understand it,
 2 the disclaimer at the top of the Traitor List
 3 that's here now on this version, we'll find out
 4 tomorrow when the Marinos are deposed for sure,
 5 but as I understand it, this was down somewhere
 6 near the bottom, something like this, so it was
 7 not at the top.
 8 But do you recall when you looked at that
 9 whether you saw these first -- does this track,
 10 these first three lines here in the definition
 11 of treason, definition of traitor, and "Get to
 12 know your traitor," do you remember, is that
 13 what you saw or about what you saw?
 14 A. It seems that. The one I remember is,
 15 "Traitor: If you do not support our
 16 President's decisions, you are a traitor."
 17 That's what I remember. The other ones I'm not
 18 clear about.
 19 Q. Traitor then, as the list is defined, states,
 20 "If you do not support our President's
 21 decisions, you are a traitor." Does that
 22 anywhere accuse you of being a criminal?
 23 A. I'm accused of being a traitor. That follows,
 24 yes.
 25 Q. So the claim is just based simply on the use of

1 the word "traitor," not on any other allegation
 2 in the document, as far as you're concerned?
 3 A. I don't see any other allegations in there,
 4 except if you're a traitor, you're guilty of
 5 treason. Right? So that follows that that
 6 would be a definition that applied.
 7 Q. Do you think there's room in the United States
 8 for vigorous debate in which people are calling
 9 each other names like this?
 10 A. Not if you call somebody a traitor, no.
 11 Q. You start being someone who would in most
 12 contexts be a supporter of First Amendment
 13 rights. Is that true?
 14 A. Say that again.
 15 Q. You strike me as someone who in most contexts
 16 would be in favor of First Amendment rights, to
 17 speak your mind.
 18 A. With the exceptions that are in the law, yes.
 19 Q. But you believe it's the use of certain words
 20 that should trigger liability?
 21 A. Well, you know, was it the Supreme Court said?
 22 You can't yell fire in a crowded theater.
 23 That's an exception to that, to your personal
 24 right of free speech.
 25 There are other exceptions. I think

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1 calling somebody a traitor, which is a capital
 2 crime, I think that's an exception, too. I
 3 don't think you should be allowed to do that.
 4 Q. Have you ever called someone a traitor or
 5 accused them of treason?
 6 A. Not in my memory.
 7 Q. Have you ever heard someone call President Bush
 8 a traitor or President Clinton or --
 9 A. I've heard them called other names, but not
 10 traitor.
 11 Q. Do you believe if someone called President Bush
 12 a traitor, that he should be able to bring a
 13 civil lawsuit against that person?
 14 A. If that's his desire, yes, I think so.
 15 Q. Exhibit 7 is the next one. This is the Not In
 16 Our Name Petition. Tell me about how your name
 17 came to be on this petition. When did you
 18 first hear about it?
 19 A. I can't remember the date. I know that I think
 20 it was on the Internet, that the Not In Our
 21 Name group was asking for signers on the
 22 statement against the Iraq War, and I signed.
 23 Q. Your name is second from the top. It looks
 24 like it's alphabetical. It doesn't necessarily
 25 mean the order of importance or chronology.

1 A. I'd hope not.
2 Q. Why did you sign this?
3 A. Because I'm against the war -- I'm against
4 invading Iraq. I'm against the war in Iraq.
5 Q. Did you read the entire petition before you
6 signed it?
7 A. I probably did. I don't remember, but I
8 probably did.
9 Q. Did you know it was going to be published in
10 the New York Times?
11 A. I did.
12 Q. USA Today, Los Angeles Times?
13 A. Yes.
14 Q. Did you understand this was going to garner
15 worldwide publicity, most likely?
16 A. Well, I was hoping it would.
17 Q. It states here, one of the things that struck
18 me, "We believe that questioning criticism and
19 dissent must be valued and protected." You
20 certainly believe that.
21 A. Yes.
22 Q. But do you believe it goes both ways, that the
23 critics themselves must subject themselves
24 to counter-criticism?
25 A. Well, having spent a number of years in

1 Q. Do you see that going both ways sometimes? Do
2 you see people who support the President or try
3 to support the President or attack people who
4 attack him? Do you see them being branded or
5 labeled?
6 A. Well, it's kind of an imbalance of power. You
7 have Bush as President. You have a Republican
8 Senate, Republican House. It's very difficult
9 to say they're in the minority.
10 What mostly I think of as branding people
11 in a McCarthyist type of situation is
12 dissenters who speak out who are in the
13 minority. It's hard to think of people who
14 support Bush in that context.
15 Q. Okay. Do you believe the Iraq war was illegal?
16 A. I do, yes.
17 Q. Would that be accusing the administration of
18 committing a crime?
19 A. I do think that it's illegal. I don't know if
20 that's a crime, but I know it's illegal. To me
21 the Constitution says if you want to start a
22 war, you declare war. You have Congress
23 declare the war. The reason that's in the
24 Constitution is because the public ought to be
25 entitled to have a voice in whether you go to

1 politics, I've always understood that I would
2 get criticism for my positions, but I never
3 expected to be called a traitor to my country.
4 Q. The website itself, though, did that ever
5 actually use the word "traitor to your country"
6 or did it just say "traitor"?
7 A. Whatever it says. It speaks for itself.
8 Q. Tell me, I've seen in some of the things you've
9 written, the phrase "new McCarthyism," that
10 phrase. Does that ring a bell?
11 A. Yes.
12 Q. Tell me what that means.
13 A. Do you know what the "old McCarthyism" was?
14 Q. In the '50s.
15 A. I refer to that, yes. Where if you disagreed
16 with the government, you were back in those
17 days they called them communists, which was
18 understood to be a treasonous activity. It
19 heaped scorn upon anybody who disagreed with
20 the establishment back then.
21 The new McCarthyism is roughly the same
22 thing, that if you disagree with the policies
23 of President George W. Bush, and if you're
24 called a traitor, to my that's the new
25 McCarthyism, yes.

1 war or not.
2 In this case I don't think they did. That
3 wasn't a declaration of war. I think the
4 President stampeded the Congress into thinking
5 we're under threat from nuclear attack. People
6 were frightened. Therefore, majority of the
7 members of Congress voted to support the
8 invasion of Iraq, which I think was a big
9 mistake.
10 Q. When people accuse the administration or any
11 administration, this or any, of committing
12 illegal acts and violating the Constitution, do
13 you think they should be entitled to defend
14 themselves by filing lawsuits against the
15 protestors?
16 A. Certainly, yes.
17 Q. Did you talk with Jane Fonda or Professor
18 Roxanne Dunbar-Ortiz before you signed this
19 petition?
20 A. No. I corresponded with them by e-mail, but I
21 never talked to them.
22 Q. Are you friends with Miss Fonda?
23 A. Yes, I am.
24 Q. And Professor Dunbar-Ortiz?
25 A. I've never met her, but I've met Miss Fonda.

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1 Q. How would you describe the public manifestation
2 of your opposition to the Iraq War before we
3 invaded? I mean that's a poorly worded
4 question.

5 A. I don't understand it.

6 Q. Tell me what you did to mobilize opposition to
7 the Iraq War before we invaded.

8 A. I made several speeches around Sioux Falls. I
9 organized a group of former U.S. Senators who
10 eventually came up with this statement that we
11 issued publicly.

12 Q. That's Exhibit 8?

13 A. That's Exhibit 8.

14 Q. These are all former United States Senators
15 from both parties?

16 A. Yes.

17 Q. What was the intent of organizing this group?

18 A. To try to mobilize public opposition to the
19 invasion of Iraq.

20 Q. Would you agree the decision of whether or not
21 to invade Iraq is probably one of the most
22 significant of the last generation? Is that a
23 fair statement?

24 A. Yes. I think it's the issue of our
25 generation.

1 Q. Tariq Aziz was the foreign minister of Iraq?

2 A. No, he was -- I don't know what he was. He was
3 one of the leaders.

4 Q. Secretary of State equivalent.

5 MR. EPP: I think he was foreign
6 minister.

7 A. At one point he was. I'm not sure if he was at
8 this point. Maybe he was deputy prime
9 minister, something like that.

10 Q. Representing Saddam Hussein on behalf of Iraq
11 at that time.

12 A. I assume so, yes.

13 Q. Did you also meet with the head of the Iraq
14 Parliament? I think I read that somewhere.

15 A. Give me his name.

16 Q. Is it Hammadi?

17 A. Saadoun Hammadi, yes. Actually he was somebody
18 I met years before that. He's a graduate of
19 the University of Wisconsin. He got his Ph.D.
20 from Wisconsin University.

21 Q. Interesting.

22 A. He used to be foreign minister when I first met
23 him in the 1980s.

24 Q. So when was this in terms of when we actually
25 invaded? Days before?

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1 Q. Can you think of a more divisive and important
2 question that's faced the United States since
3 the Vietnam War?

4 A. I can't.

5 Q. It would be fair to say that you were intent on
6 doing what you thought was right with regard to
7 that situation.

8 A. Well, my intention was to try to prevent the
9 invasion of Iraq, keep us out of the war.
10 That's my intent.

11 Q. And you were intending to act publicly in
12 whatever legitimate way you could to do that.

13 A. Correct.

14 Q. Was your voice heard by anyone?

15 A. Not very many people apparently.

16 Q. Tell me about going to Iraq before the
17 invasion.

18 A. I went because I wanted to prevent a U.S.
19 invasion of Iraq, and I went to ask the Iraqi
20 government, and I met with Tariq Aziz, and I
21 specifically said to him, "Please remove the
22 excuses for Bush invading Iraq, because he
23 wants to invade. Please remove the excuses by
24 allowing the weapons inspectors to come into
25 Iraq."

1 A. September of 2002. We invaded in March of
2 2003, if I recall.

3 Q. So this was several months before we actually
4 invaded.

5 A. Yes. In fact, the Iraqis did let the weapons
6 inspectors come in.

7 Q. I saw that in one of the articles describing.

8 Do you believe it was your conversations, your
9 delegations, meetings and conversations with
10 these Iraqi leaders that may have actually led
11 to their decision to declare their amenability
12 to having inspectors come in?

13 A. I think it was a major part of it. I don't
14 think we were alone in it. I think the U.N.
15 was also pushing them and other -- Nelson
16 Mandela was pushing them to do the same thing.
17 I think there were a lot of people involved.

18 But they did it I think one day after I
19 asked him to do so. They allowed the weapons
20 inspectors to come back in.

21 Q. You grew up in South Dakota. Correct?

22 A. Yes.

23 Q. This is one of the, I think we agree, one of
24 the most important issues of our time, and
25 you're a kid from South Dakota, and you are in

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1 the Middle East in the center of this entire
 2 important issue. Is that a fair statement?
 3 A. Well, I'm not a kid. I'm 73 years old.
 4 Q. But grew up in South Dakota.
 5 A. I did.
 6 Q. Meaning it's impressive that -- what I'm trying
 7 to establish is you are having a major affect
 8 on world events from South Dakota.
 9 A. Well, I don't know how to answer that.
 10 Q. Would you agree that you had an affect on world
 11 events?
 12 A. Well, if, indeed, it was my work that got the
 13 Iraqis to let the weapons inspectors in, which
 14 did absolutely no good, anyhow, I guess but
 15 that's what happened. That's all I can say
 16 about it.
 17 Q. It depends on one's point of view whether it
 18 did any good, I guess.
 19 A. It didn't do any good. It didn't prevent the
 20 invasion.
 21 Q. It didn't prevent the invasion. What did they
 22 tell you about weapons of mass destruction when
 23 you were there?
 24 A. Said they didn't have any. I guess he was
 25 right, too.

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1 Q. Who went with you to Iraq? I saw Congressman
 2 Rahall.
 3 A. Yes.
 4 Q. He was a sitting Congressman?
 5 A. From West Virginia, yes.
 6 Q. Who else?
 7 A. Warren Strobel from Knight-Ridder.
 8 Q. Journalist?
 9 A. He was a journalist. There were several
 10 journalists. There was somebody from National
 11 Public Radio. I can't remember the guy's
 12 name. Let's see, Norman Solomon from the
 13 Institute for Public Accuracy.
 14 Q. I think I read something about him.
 15 A. There are probably a couple others, but I can't
 16 remember.
 17 Q. Where else? Did you just go to Baghdad? Did
 18 you go to other governments?
 19 A. We stopped in Damascus both ways.
 20 Q. What did you do there?
 21 A. I can't remember if I met with the President of
 22 Syria or not. I can't remember that now. I've
 23 met with him a number of times. It's possible
 24 I did.
 25 Q. Is it true you know many of the leaders in the

1 Middle East?
 2 A. Yes.
 3 Q. Do you speak with them regularly?
 4 A. Not regularly.
 5 Q. I've been to your office. I don't know if you
 6 remember, when I was in law school I did some
 7 legal research for you.
 8 A. You did some research for me, yes.
 9 Q. So I've been to your office, and I remember all
 10 the photographs on the wall, you with all the
 11 important leaders.
 12 A. Including Mohammed Ali.
 13 Q. Mohammed Ali was the good one, the best one. I
 14 know you're not going to answer the question of
 15 whether or not you are a public figure, but is
 16 it safe to say that you are someone who rubs
 17 elbows with some of the most important figures
 18 of our time?
 19 A. I don't think that's safe to say, no.
 20 Q. You would disagree with that?
 21 A. Well, yeah. Whether people I meet with are
 22 important or not, I don't know. That's open to
 23 discussion.
 24 Q. Did you view the ProBush.com website calling
 25 you a traitor or putting you on the Traitor

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1 List as impugning your patriotism?
 2 A. Oh, yes.
 3 Q. Is it a crime to impugn somebody's patriotism?
 4 A. If you call them a traitor, if you accuse them
 5 of a crime, yes, that's wrong. I was accused
 6 of a crime.
 7 Q. I'm looking at Exhibit 9, the second page. Is
 8 this an article you authored?
 9 A. Yes.
 10 Q. I'm sorry, the third page.
 11 A. There's nothing in the third page.
 12 Q. No, second page. I'm sorry. The last
 13 paragraph says, "The question of patriotism
 14 should not be aimed at those who oppose the
 15 aggressive devastation of a small Third World
 16 country, but at those in the Bush
 17 administration who seem to delight in the
 18 prospect of the annihilation of innocent Iraqi
 19 civilians."
 20 Are you impugning the patriotism of people
 21 in the Bush administration?
 22 A. No, I'm not actually. I'm impugning their
 23 motives, which I think are very bad motives.
 24 Incidentally, I said, "Their plan will
 25 devastate our own economy." I guess I was

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1 right about that, wasn't I? "And destroy the
2 moral values by which we have lived since the
3 founding of this country." I think I was right
4 about that, too.

5 Q. Do you think it's unpatriotic to criticize
6 people who criticize the President?

7 A. No.

8 Q. This is what I was talking about earlier,
9 Exhibit 11. "Although Aziz seemed a bit
10 negative in responding to us, two days later
11 his government announced that inspectors could
12 come in without conditions."

13 A. Where are you at?

14 Q. At the bottom.

15 A. Yeah. Actually what he said, he was arguing
16 against the idea of letting weapons inspectors
17 in. He said the weapons inspectors demanded
18 they be able to go into the palaces. We were
19 against that for a long time. Finally we let
20 them come in. What did they do? They brought
21 global positioning systems in with them to
22 create targets out of palaces.

23 Q. The U.N. inspectors?

24 A. Yeah. Basically the allegation was that they
25 were a bunch of spies, the first bunch of

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1 inspectors that left in 1998. That was one
2 argument he was making against allowing them to
3 come back in. I think I said, "I don't care.
4 The idea is if you want to avoid an invasion,
5 which I want to avoid, let them come back in.
6 Let them inspect."

7 Q. And they did.

8 A. And they did for a time.

9 Q. Did you know Saddam Hussein?

10 A. No, I never met him.

11 Q. Exhibit 12 here, this is sort of a press
12 announcement about your visit.

13 A. This is put out by Institute for Public
14 Accuracy.

15 Q. Exhibit 13 we looked at, the first e-mail from
16 Todd in April of 2003. Then he follows up with
17 a letter, Exhibit 14. It states here, this is
18 May of 2003, Page 2, "Though you have attempted
19 to disclaim this defamation, it is my opinion
20 that this attempted disclaimer is ineffective
21 and meaningless."

22 At least by this date you had seen the
23 disclaimer.

24 A. Well, at least Todd had, if I hadn't.

25 Q. Why would a disclaimer that said, that makes it

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1 clear this is a parody, these people are not
2 legal traitors, why wouldn't that be effective
3 in removing any doubt as to what the purpose of
4 the --

5 A. It seems to me they didn't put that up until
6 after they were sued. It wasn't on the website
7 before they were sued.

8 Q. I think this letter is before they were sued.

9 A. Or they were threatened suit, I should say.
10 Honestly, I don't remember what date they were
11 sued.

12 Q. If the testimony shows or the evidence
13 ultimately shows this disclaimer was there in
14 some form from the inception, why wouldn't that
15 language saying, "Hey, this is a parody. These
16 people are not legal traitors." Why wouldn't
17 that clear up whatever doubt anyone would have
18 about what the purpose --

19 MR. EPP: Objection, facts not in
20 evidence. Objection, calls for a legal opinion
21 by the witness.

22 A. I can't answer that question.

23 Q. Did you understand the disclaimer when you read
24 it?

25 A. I understood what they said. It looked to me

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1 like the authors of the website were trying to
2 weasel out of some legal trouble they might be
3 in because of calling people traitors. That
4 much I understood.

5 Q. A lot of these are kind of just the same
6 thing. Another meeting or article about the
7 delegation. Was that the only delegation you
8 led regarding the Iraq War?

9 A. Yes.

10 Q. Did you have any -- did you do any other media
11 interviews, that type of thing, to express
12 opposition to invading Iraq?

13 A. I probably did. I'm not able to remember what
14 exactly.

15 Q. You certainly wrote articles, and we've seen
16 some of those.

17 A. Oh, yes.

18 Q. Were you in consultation with leaders of
19 countries around the world about their
20 positions on invading Iraq?

21 A. No.

22 Q. Were you part of any organizations that were --
23 that shared your dedication to preventing an
24 invasion?

25 A. Well, Not In Our Name.

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1 Q. Not In Our Name.
 2 A. I signed on to their ad. I assume that makes
 3 me part of their organization.
 4 Q. Any others?
 5 A. You know, I don't think so, but I'm not going
 6 to be positive on that. I just can't remember
 7 if I belonged to any other organizations like
 8 that.
 9 Q. Exhibit 16, the headline here, I got this off
 10 the Internet, Lebanonwire.com. "Former U.S.
 11 Senator calls for change in U.S. policy." That
 12 is what you were doing, calling for a change in
 13 U.S. policy?
 14 A. Yes.
 15 Q. Do you know what Lebanonwire is?
 16 A. I don't.
 17 Q. It says, "Live news direct from Beirut." Did
 18 you know your statements on the Iraq War were
 19 being heard and reported in the Middle East?
 20 A. I don't know, but I assume they would be. This
 21 was before the invasion. This is before I went
 22 to Iraq.
 23 Q. That's right. So this had nothing to do with
 24 the invasion. This had to do with Middle East
 25 policy.

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1 A. Yes.
 2 Q. Even prior to the threat of an invasion of
 3 Iraq, you've been an advocate for certain
 4 policy positions with regard to the Middle
 5 East.
 6 A. Yes.
 7 Q. Do you consider yourself well-known in the
 8 Middle East?
 9 A. In parts of the Middle East probably, yes.
 10 Q. More so than in the United States?
 11 A. Oh, yes.
 12 Q. I bought one of your wife's cookbooks.
 13 A. How does it work?
 14 Q. I gave it to my mom. She likes it.
 15 A. You should get the other one, too.
 16 Q. Does she have a new one?
 17 A. Middle East Cookbook. It's in her restaurant.
 18 Q. My mom likes the soy one.
 19 Institute for Public Actors, Exhibit 17.
 20 That was on one of these previous documents,
 21 Norman Solomon. What is that? Is that
 22 something you are affiliated with?
 23 A. I'm not. I know Norman Solomon, and I know
 24 Sam Hussein, both of whom work for the
 25 Institute. Oh, Jim Jennings was along on that

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1 trip, too. I just remember. I see his name
 2 down here.
 3 Q. Conscience International. Okay.
 4 A. He had been to Iraq a number of times.
 5 Q. What is the Institute for Public Accuracy?
 6 A. I don't know. It's a public institute. I
 7 don't really know much about it, except I know
 8 the two guys that work there.
 9 Q. Exhibit 18, I think this is your official
 10 Congressional biography. I assume this is all
 11 accurate information in here?
 12 A. Well, do you want me to read it and tell you?
 13 Q. If there's any mistakes, I would like to know
 14 it.
 15 A. Pardon me?
 16 Q. I would like to know if there's something
 17 wrong, incorrect.
 18 A. It's accurate as far as I can tell.
 19 Q. "Advise and Dissent" which I have read and
 20 thought was very interesting, and then there's
 21 another book you authored called "Through
 22 Different Eyes."
 23 A. Yes, coauthored with Hyman Book Binder.
 24 Q. Advise and Dissent is kind of a memoir.
 25 A. Yes.

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1 Q. What's Through Different Eyes?
 2 A. It's a debate on the Israeli, Palestinian
 3 conflict, debate in print.
 4 Q. Published in 1987.
 5 A. Yes.
 6 Q. Are those the only two books you've written?
 7 A. Yes.
 8 Q. I saw one other thing, I think I have it in
 9 here, something you either wrote with
 10 Pettigrew, I hadn't heard this before. Exhibit
 11 21. Is that Imperial Washington?
 12 A. No, I didn't write that with Pettigrew.
 13 Q. Did you do an introduction?
 14 A. I may have. It's a republication of
 15 Pettigrew's book. He died in the 1920s.
 16 Q. Yeah, I was going to say. He was the original
 17 Senator Pettigrew.
 18 A. Yes, he was Senator Pettigrew. I think I wrote
 19 an introduction to it.
 20 Q. I want to look at this one, 19.
 21 A. Okay.
 22 Q. Second to last page, down at the bottom, and
 23 this is an article that you wrote or a speech
 24 you gave. Do you remember what this is?
 25 A. It's a speech I gave.

1 Q. It says, "Biblically, Judas Iscariot was the
2 man who betrayed" --
3 A. Where are you?
4 Q. Down at the bottom. "Was the man who betrayed
5 Jesus. In more modern times, farmers have
6 placed what is known as a 'Judas goat' to
7 entice other animals to come into their trap.
8 Our community, in an effort to define
9 ourselves, must be wary of Judas goats placed
10 in our midsts in an effort to end our reliance
11 on our principles."
12 Judas goats is kind of a colorful phrase
13 that you're using to describe someone who might
14 betray somebody. Is that true?
15 A. Yes.
16 Q. Would you agree that traitor is also a colorful
17 phrase someone could use to express the very
18 same conflict?
19 A. No.
20 Q. Exhibit 20, Progressive Media Project. Did you
21 write this regarding your visit to Iraq?
22 A. Yes, I did.
23 Q. What is the Progressive Media Project?
24 A. I don't know.
25 Q. They just published it.

1 Board. I'm curious what that was.
2 A. I don't even remember. I just saw that.
3 Q. John Anderson is on there. It seems like it
4 would be a while ago.
5 A. It was some time ago.
6 Q. Because didn't he die?
7 A. I don't know.
8 Q. I think he did pass away.
9 A. I haven't heard from him for a long time.
10 Marjorie Mezvinsky, she used to be on Channel 7
11 in Washington, D.C.. She married Congressman
12 Ed Mezvinsky, who was later convicted of
13 embezzlement or some strange crime like that.
14 Q. This I sort of enjoyed, Exhibit 24. "I'll Hold
15 My Nose With One Hand and Vote For Clinton With
16 the Other."
17 A. I remember writing that.
18 Q. Here again, I'm setting the same trap for you.
19 On Page 2 it says, "The Republicans are furious
20 as they watch him, every day, steal their
21 issues." Now, stealing is a crime. Right?
22 A. Well, stealing property that belongs to
23 somebody else. I'm not sure an issue would be
24 considered property.
25 Q. Intellectual property.

1 A. Yeah.
2 Q. Okay.
3 A. I think it has to do with the Progressive
4 Magazine, but I'm not sure about that.
5 Q. Would you agree you're considered a hero in
6 many progressive circles in the United States?
7 A. I can't say yes or no to that. I don't know.
8 Q. Remember you are under oath here. Are you a
9 vegetarian?
10 A. Yes.
11 Q. I saw this. I saw that it says famous
12 vegetarians.
13 A. I'm a lacto-ovo vegetarian, if that makes a
14 difference.
15 Q. That means milk and dairy.
16 A. Yes.
17 Q. Under politicians, statespersons and activists,
18 we have, among others, Mahatma Gandhi, Susan B.
19 Anthony, and James G. Abourezk. That's pretty
20 good company.
21 A. That's good company.
22 Q. Would you deny you are a famous vegetarian?
23 A. I deny I'm famous, but I admit I'm vegetarian.
24 Q. Exhibit 23. It says you are on the advisory
25 board, Public Campaign's National Advisory

1 A. I didn't say this was intellectual.
2 Q. That's probably right.
3 A. Probably not.
4 Q. Again, though, do you see the point that --
5 A. I don't see your point. I'm sorry.
6 Q. You don't see the point that using language
7 like stealing, being a traitor can be a
8 colorful way to express an idea that is not
9 necessarily criminal?
10 A. It depends on what you're talking about. For
11 example, you say he's stealing home base or
12 stealing second. It's not a crime in
13 baseball.
14 Stealing issues is not a crime. It's a
15 political crime, but not a criminal crime.
16 Q. Exhibit 25.
17 A. I had a lot of hair in this picture.
18 Q. "The loneliest man." Is that something you
19 were called?
20 A. I don't remember that, no.
21 Q. On the second page it states, "You've argued
22 that they're in collusion" -- talking about oil
23 and gas companies. "You've argued that they're
24 in collusion with the government, currently
25 perpetrating a collective rape of the American

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1 consumer of a magnitude unknown in our
 2 history."
 3 Rape is a crime.
 4 A. Rape of women is a crime, yes. Rape of
 5 American consumers obviously is not looked upon
 6 as a crime, because a lot of it goes on, and
 7 nobody goes to jail as a result of it.
 8 Q. Were you actually accusing oil and gas
 9 companies of committing the crime of rape?
 10 A. Well, what I'm accusing, was accusing the oil
 11 companies of is taking the money from the
 12 public with the government in collusion.
 13 Q. But that's not rape.
 14 A. Well, that's a figure of speech.
 15 Q. So the answer would be you were not accusing
 16 them of actually committing the crime of rape.
 17 True?
 18 A. Not rape against women, no. It should be
 19 consumer, which would be both men and women.
 20 Q. But that's the word you selected.
 21 A. All right.
 22 Q. Can you understand how someone, in order to
 23 express their dissatisfaction with your public
 24 positions, might select an equally colorful
 25 word or inflammatory word like traitor?

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1 MR. EPP: Objection. He can't know what
 2 others think.
 3 A. I can't know.
 4 Q. But can you understand why?
 5 A. No.
 6 Q. This is a part of your book, Exhibit 26. Page
 7 141. The book is Advise & Dissent. Is it true
 8 you called Jimmy Carter a liar?
 9 A. What I said was during my entire adult life I
 10 knew that governments lied, but I never thought
 11 that Jimmy Carter would lie. Those are my
 12 words. You can do that on the Senate floor, by
 13 the way.
 14 Q. That's true. Lying could be perjury, which
 15 could be a crime.
 16 A. If you do it under oath, yes.
 17 Q. But there's a privilege on the Senate floor
 18 against any libel claims.
 19 A. That's right.
 20 Q. What's the purpose for that?
 21 A. Of what?
 22 Q. For that privilege? Why should there be more
 23 protection for politicians?
 24 A. I don't know. I don't know how that came
 25 about. Probably a lucky thing for a lot of

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1 people that are there.
 2 Q. The next page, Page 142. The middle sentence
 3 that starts off or paragraph that starts off
 4 with "Ted Kennedy." Bottom of that paragraph
 5 says, "Given our anger at Carter and Mondale
 6 for what we saw as their treachery, it seemed
 7 like a reasonable thing to do." What was their
 8 treachery they had done?
 9 A. Well, I explain it in the book, that Carter
 10 started out on our side and switched.
 11 Q. On deregulation or --
 12 A. On gas deregulation, yes.
 13 Q. Just tell me two sentences on what was the
 14 issue on that.
 15 A. Well, they were trying to deregulate the price
 16 of natural gas. I was trying to stop it.
 17 Q. In other words, there were fixed prices?
 18 A. Price controls on natural gas, yes. Had been
 19 there since the 1930s.
 20 Q. They actually removed them?
 21 A. They were trying to remove them when I
 22 filibustered, yes.
 23 Q. Do we still have those?
 24 A. No, no. They were lifted, because Carter sent
 25 Mondale up to preside over the Senate. I had

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1 some 308 amendments. It was an amendment
 2 filibustering I was doing. Mondale was
 3 presiding, and presumably under orders from
 4 Jimmy Carter, who had been on our side to begin
 5 with, started ruling the amendments out of
 6 order. They were called up by a Senator Byrd,
 7 one by one, and ruled out of order. I tried to
 8 get recognition to protest, and he would never
 9 recognize me.
 10 I have to say that even Senators who were
 11 pro-oil company, pro-gas company were objecting
 12 then, because they saw the damage being done in
 13 the Senate by that procedure.
 14 Q. By the stopping of the --
 15 A. By wrecking the rules of the Senate.
 16 Q. In calling them, the same trap I'm trying to
 17 catch you in, but in calling them what you saw
 18 as their treachery, isn't that a synonym for
 19 traitor, treason?
 20 A. Well, I didn't use that term with respect to
 21 their loyalty to the country. As I explained
 22 to you, Carter started out on our side and then
 23 switched sides.
 24 Q. But he had been -- it was a betrayal in your
 25 view.

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1 A. Oh, yes.
 2 Q. So couldn't you figuratively call him a
 3 traitor?
 4 A. But he wasn't a traitor to his country.
 5 Q. Not to his country, but couldn't you
 6 figuratively call him a traitor for doing that?
 7 A. But not to his country. The answer is no. My
 8 answer is no to that question.
 9 Q. Do you believe that your criticism of the
 10 administration regarding its Iraq policy and
 11 ProBush.com's statements on its websites to
 12 criticize you, do you believe they affect
 13 matters of public concern and policy?
 14 A. I don't know. I don't know the answer to
 15 that. It's not for me to say.
 16 Q. Have you visited any doctors or mental health
 17 professionals to deal with any problems caused
 18 by these statements on the ProBush.com website?
 19 A. I won't answer that question.
 20 Q. I'm entitled to know that. Are you claiming
 21 any type of emotional, physical injury?
 22 A. Don't need to talk about damages.
 23 Q. I'm entitled to get into damages, if you're
 24 claiming damages.
 25 A. I'm refusing to answer.

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1 MR. PARSON: If I can ask your attorney.
 2 Are you claiming? I haven't seen it in your
 3 Complaint. My assumption is you're not
 4 claiming any physical, emotional injuries
 5 resulting from this.
 6 MR. EPP: We have not put Senator
 7 Abourezk's mental state into issue, mental
 8 condition, if you will.
 9 MR. PARSON: Or emotional injury. True?
 10 THE WITNESS: Not required to.
 11 MR. EPP: Not required to. It's up to a
 12 jury to determine.
 13 MR. PARSON: Just verifying, though, that
 14 your claim is based on a libel per se claim and
 15 not emotional, physical damages.
 16 MR. EPP: I guess I answered that we have
 17 not disclosed a medical expert at this time or
 18 counseling expert.
 19 Q. Do you have any documentary evidence, I'm just
 20 asking, that demonstrates the statements in the
 21 ProBush.com website are factually false as
 22 opposed to merely being opinions or insults?
 23 A. I don't have an answer to that question.
 24 Q. You're not aware of any documentary evidence?
 25 A. I don't have an answer to that question.

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1 MR. EPP: Let me clarify. What kind of
 2 things are you talking about?
 3 Q. I'm assuming, I don't know what there would
 4 be. I mean do you have any evidence -- do you
 5 have any documents of any kind, and I don't
 6 know what they would be, that demonstrate that
 7 his statements on the ProBush.com website are
 8 factual falsities rather than just mere insults
 9 or opinion?
 10 A. I'll answer that part. I didn't understand
 11 your question at first. Calling me a traitor
 12 is factually false.
 13 Q. Do you have any documents or -- I understand no
 14 one -- I want to make this clear. No one is
 15 contending that you are a legal traitor to the
 16 United States Government or have committed any
 17 crime whatsoever. That's our position.
 18 But do you have any documents, and I'm
 19 guessing you don't but I'm wondering, that
 20 demonstrate that what's on the ProBush.com
 21 website is factually false as opposed to being
 22 merely an insult?
 23 A. Well, I would say there's an absence of
 24 documents proving the truth of their
 25 statement. I'm not, never been accused of

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1 being a traitor formally. I've never been
 2 charged with it, never been tried or
 3 convicted.
 4 Q. Did you ever, prior to seeing this website, did
 5 you have any idea who the Marino brothers were?
 6 A. No.
 7 Q. Absolutely no conversations with them?
 8 A. No.
 9 Q. Do you know anything about them at all, other
 10 than what you read in this lawsuit?
 11 A. No.
 12 Q. Do you know why you were placed on the website?
 13 A. I don't know.
 14 Q. Do you know whether or not they knew who you
 15 were when you were placed on the website?
 16 A. I don't know. I assume they must have known or
 17 wouldn't have put my name on there. That's an
 18 assumption. That's all I can say.
 19 MR. PARSON: I think I'm entitled to know
 20 what your damages calculations are, if any. If
 21 it's -- a libel per se is a calculation of
 22 damage. That's what your Complaint states, and
 23 if that's what it is, then I accept that and I
 24 don't need to go any further. But if you are
 25 claiming individualized damages, I'm entitled

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1 to know what those are and how they're
2 calculated. Do you want to confer at all with
3 Jim on this?

4 MR. EPP: We stated one count of libel
5 per se. My understanding of the law in South
6 Dakota is that damages are presumed, and it's
7 up to a jury.

8 THE WITNESS: We're invading the province
9 of the jury if we try to.

10 MR. PARSON: That I understand. Do you
11 have any calculations of damages beyond an
12 assertion that you are libeled per se?

13 MR. EPP: Mr. Abourezk has testified those
14 discussions were with me and are protected by
15 attorney-client privilege, and we're stated an
16 objection on the record.

17 MR. PARSON: All right. We'll talk about
18 that.

19 Q. Do you have any idea how many people have
20 viewed the ProBush.com website?

21 A. I don't know.

22 Q. Has anyone come to you and said they've seen
23 it, and what are you doing on there?

24 A. Yes. Yes. The guy who originally contacted
25 me, I can't remember who that was, and I've had

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1 other people discuss it. I don't even remember
2 who. I didn't keep track of who they were.

3 MR. PARSON: Can we take a one-minute
4 break?

5 MR. EPP: Sure.

6 (A recess was taken)

7 Q. Have you come across anyone who actually
8 believes you are a traitor as a result of this
9 list, that believes you've committed the crime
10 of treason?

11 A. Except for the Marino brothers, I don't know of
12 anybody else who has told me. So how many
13 people believe that, I don't know. I mean it's
14 impossible for me to know.

15 Q. I'll represent to you they don't believe that,
16 but we'll find out tomorrow. Thank you very
17 much, Jim.

18 A. Thanks.

19 MR. EPP: Jim, you have a right --

20 THE WITNESS: I'll waive the reading.

21 (Witness excused)

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF MINNEHAHA)

4 I, Jill M. Connelly, Court Reporter
5 and Notary Public within and for the State of
6 South Dakota:

7 DO HEREBY CERTIFY that the witness
8 was first duly sworn by me to testify to the
9 truth, the whole truth, and nothing but the
10 truth relative to the matter under
11 consideration, and that the foregoing pages
12 1 - 58, inclusive, are a true and correct
13 transcript of my stenotype notes made during
14 the time of the taking of the deposition of
15 this witness.

16 I FURTHER CERTIFY that I am not an
17 attorney for, nor related to the parties to
18 this action, and that I am in no way interested
19 in the outcome of this action.

20 In testimony whereof, I have hereto
21 set my hand and official seal this 14th of
22 February, 2005.

24 Jill M. Connelly, Notary Public
25 My commission expires 3-26-05

January 18, 2005

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27:11 30:7	states [22] 1:1		36:4 45:16 48:7	46:6 55:16
small [1] 36:15	6:16 7:6 7:9		49:25 52:19 53:3	University [2] 31:19
society [1] 19:11	7:11 7:12 7:17		53:4 53:6 55:11	31:20
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12:20 23:11 23:15	48:21 55:16 56:22		trap [3] 45:7 47:18	33:4 38:16 39:5
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35:16 45:13 45:17	statutes [2] 10:25		treachery [3] 51:6	54:11 57:7
			51:8 52:18	USA [1] 25:12
				USCA [1] 10:23

Advanced Reporting (605) 332-9050

U.S. DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DISTRICT

JAMES G. ABOUREZK

Plaintiff,

v.

PROBUSH.COM, INC., a Pennsylvania corporation,
and MICHAEL MARINO, an individual

Defendant.

FILED

MAY 27 2003

[Signature]
CLERK

Civil Action No.

**VERIFIED COMPLAINT,
NOTICE OF APPEARANCE,
NOTICE OF PUNITIVE
DAMAGES and
NOTICE OF JURY TRIAL
DEMAND**

COMES NOW the Plaintiff, James Abourezk, for his Verified Complaint against Defendants Probush.com Inc. and Michael Marino, he states and alleges:

INTRODUCTION

The following action against the Defendants arises from libel of the Plaintiff. Plaintiff discovered that he was called a traitor on Defendants website. Under South Dakota Law, such a statement is considered libel per se.

PARTIES

1. Plaintiff is a resident of Sioux Falls, county of Minnehaha, state of South Dakota. He is a former U.S. Senator from South Dakota.
2. On information and belief, Defendant, Probush.com Inc. is located at P.O. Box 16, in the city of West Point, state of Pennsylvania. The administrative contact is listed as Michael Marino. See Exhibit A, a true and correct copy of a Whois search, attached hereto and incorporated herein.
3. On information and belief, Defendant, Michael Marino is the editor and publisher of the probush.com website.

JURISDICTION and VENUE

4. This Court has jurisdiction over the matter and the parties under 28 USC § 1332. The Plaintiff requests damages in excess of \$75,000. The Plaintiff is a resident of the state of South Dakota and the Defendants are, under information and belief, residents of the state of Pennsylvania.

EXHIBIT

tabbles

5. Personal jurisdiction over the Defendant's is appropriate in South Dakota under SDCL 15-7-2(1), as they are transacting business in South Dakota by the sale of merchandise from Defendant's website, probush.com, and/or SDCL 15-7-2(2), the accrual in this state of a tort against the Plaintiff the Defendants committed, and/or SDCL 15-7-2(14), the Defendants maintenance of a website accessible by South Dakota residents.

GENERAL ALLEGATIONS COMMON to all COUNTS

6. On or about April 9, 2003, Plaintiff discovered a website, owned and operated by the Defendants, which contained a picture of him and stated he was a traitor. See Exhibit B, a true and correct copy of partial pages from probush.com, alleged hereto and incorporated herein.
7. According to Black's Law Dictionary (6th Ed. Abridged, 1991) at 1040, a traitor is "one who is guilty of treason."
8. Treason is a felony under federal law, 18 USCA § 2381, and South Dakota law, SDCL 22-8-1.
9. The Defendant's statement about the Plaintiff is libelous under SDCL 20-11-3.
10. Plaintiff is an honorably discharged veteran of the United States Navy, a former United States Congressman, and a former U.S. Senator. He also is admitted to practice law before the courts of South Dakota, the District of Columbia, and the U.S. Supreme Court. He has taken oaths to uphold the Constitution of the United States in these positions.

COUNT I -- DEFAMATION PER SE

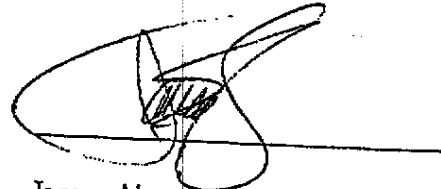
11. The Plaintiff incorporates the above paragraphs and restates them herein.
12. Defendants have made a false statement by calling the Plaintiff a traitor.
13. Such a statement is libelous per se under South Dakota law as it accuses the Plaintiff of a criminal act he did not commit.
14. Defendant's disclaimer on its website, probush.com, is ineffective and meaningless.
15. Defendants libelous statement is intended to injure the Plaintiff's legal profession and standing in the community.
16. Defendants were not privileged to make such false statements about the Plaintiff.

PRAYER FOR RELIEF

THEREFORE, the Plaintiff prays for the following relief:

- A. Actual damages in the amount of \$ 2 million.
- B. Punitive damages in the amount of \$ 3 million.
- C. The cost and attorney's fees of this action.
- D. Removal of any reference to Plaintiff on Defendant's website.
- E. Any other just and equitable relief.

Dated this 27th day of May, 2003.

A handwritten signature in black ink, appearing to read 'James Abourezk', is written over a horizontal line.

James Abourezk

Plaintiff

NOTICE OF APPEARANCE

Todd D. Epp, of counsel, Abourezk Law Offices, P.C., PO Box 1164, Sioux Falls, SD 57101-1164, hereby notes his appearance on behalf of the Plaintiff above-named.

Dated this 27th day of May, 2003.

By:

Todd D. Epp

Todd D. Epp
Of Counsel
Abourezk Law Offices, P.C.
PO Box 1164
Sioux Falls, SD 57101-1164
(o) 605.334.8402
(f) 605.334-9404

Email: tdepp@aol.com

Attorney for Plaintiff

NOTICE OF DEMAND FOR PUNITIVE OR EXEMPLARY DAMAGES

The Plaintiff hereby notifies the Defendants and the Court that he is seeking punitive or exemplary damages since he reasonably believes the Defendants actions against him are willful, wanton, and/or malicious.

NOTICE OF JURY TRIAL DEMAND

Plaintiff demands trial by jury of all issues triable by a jury.

Todd D. Epp
Todd D. Epp

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JAMES G. ABOUREZK,

Plaintiff,

--v--

PROBUSH.COM, INC, a Pennsylvania corporation,
And MICHAEL MARINO, an individual

Defendants.

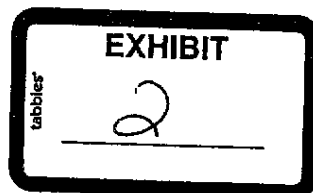
Civ. No. CIV03-4146

AFFIDAVIT OF
JAMES G. ABOUREZK

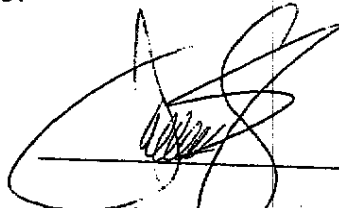
COMES NOW the Plaintiff, James G. Abourezk, with an affidavit in the above captioned matter.

Under oath, your affiant states and affirms the following:

1. I am over the age of 18 and understand that I am under oath.
2. I am the Plaintiff in the above-noted matter.
3. I have never been accused of, charged with, or convicted of the crime of treason by any state or by the United States of America.
4. On numerous occasions as a sailor, Congressman, Senator, and attorney, I have sworn to uphold the laws and Constitution of the United States of America.



Dated this 20th day of August, 2003.

A handwritten signature in black ink, appearing to read 'James G. Abourezk', is written over a horizontal line.

James G. Abourezk
Abourezk Law Offices, PC
PO Box 1164
401 E. 8th St., Ste. 321
Sioux Falls, SD 57101-1164

County of Minnehaha:

:SS

State of South Dakota:

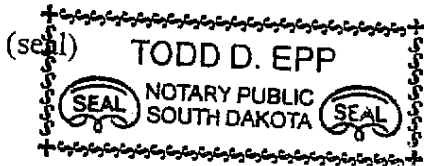
NOTARY

On this the 20th day of August, 2003, the affiant, James G. Abourezk, personally appeared before the undersigned officer and signed the foregoing instrument in my presence.

Dated this 20th day of August, 2003.

Todd D. Epp
Notary Public

My Commission expires: 9-8-04



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JAMES G. ABOUREZK,

Civ. No. CIV03-4146

Plaintiff,

**AFFIDAVIT OF
TODD D. EPP**

--v--

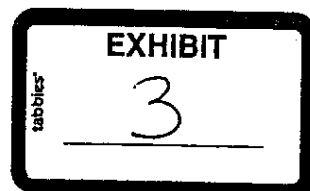
PROBUSH.COM, INC, a Pennsylvania corporation,
And MICHAEL MARINO, an individual

Defendants.

COMES NOW Attorney Todd D. Epp, attorney for the Plaintiff, James G. Abourezk, with an affidavit in the above captioned matter.

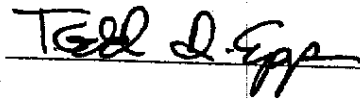
Under oath, your affiant states and affirms the following:

1. I am over the age of 18 and understand that I am under oath.
2. I am the attorney for the Plaintiff in the above-noted matter.
3. On or about April 22, 2003, I became aware of the probush.com website from my client, James G. Abourezk. I browsed the website and discovered that Senator Abourezk as well as a number of other prominent Americans were listed on the site's "Traitors List."
4. Upon my initial viewing of the website, it is my recollection that I did not see a "disclaimer" that said that the "Traitors List" was a parody or that the Senator and others on the list were not "legal" traitors to the United States of America.



5. From on or about April 22, 2003 until drafting and filing the above action on behalf of my client on May 27, 2003 with this Court, I periodically did check the probush.com website for updates to the "Traitors List". It is my recollection that I did not see a prominent "disclaimer" on the site concerning the "Traitors List" during this time.

Dated this 20th day of August, 2003.



Todd D. Epp
Of Counsel
Abourezk Law Offices, PC
PO Box 1164
401 E. 8th St., Ste. 321
Sioux Falls, SD 57101-1164

Attorney for Plaintiff

County of Minnehaha:

:SS

State of South Dakota:

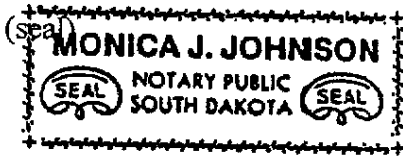
NOTARY

On this the 20th day of August, 2003, the affiant, Todd D. Epp, personally appeared before the undersigned officer and signed the foregoing instrument in my presence.

Dated this 20th day of August, 2003.

Notary Public

My Commission expires: 1-19-07



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George W. Bush

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I pledge Allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with Liberty and Justice for all.

[History of The Pledge](#)

TRIBUTES

- [U.S. Armed Forces](#)
- [Ari Fleischer](#)
- [Bruce Kiehl](#)
- [Ben Jr.](#)

President of the United States



White House photo

George Walker Bush

"I had made it clear to the world that either you're with us or you're still stands"

[Our Hero](#)

[Hail to the Chief](#)

Please Donate to ProBush.com's legal battle James Abourezk

Abourezk said that his discussions with the speaker had also focused on the "ROLE" it was playing in Lebanon. (Hizbullah) was like the tool that lebanonwire.com

Hizbullah is on the U.S. State Department list

The former Senator has no problem affording himself the same lines by listing him on a satirical "Traitor List"

Please support us! Anything you can spare

EXHIBIT

4

tabbles

EXHIBIT

A

tabbles

- Portland Police Dept.
- Mr. "Algor"

Bush 43 Archives

Official Al Gore
is a Dick Page

The Homeland
Page

Man or Midget?

Know Your Flag
Etiquette

The Portland
Protest

Protest Gallery

Protest Gallery II

Protest Gallery III

Executive Orders

Hans Blix's report
to the U.N.

Past Weekly
Review

Official Iraq
Voting Form

Can of...

Remember...

"Murderous
Tyrant" (10.7.02
address to the
nation)

How dare Mr.
"Algor" criticize
Bush

Hi Ron Parsons
Help Us Defend Our Lawsuit!

amazon honor system How do we know your name?

ProBush.com Media Attention

- Abourezk Sues ProBush.com for \$5 million
- Former Senator Files Libel Lawsuit
- On patriotism
- Former Senator Abourezk to Sue "Traitor" Website
- Defining treason
- Libel lawsuit filed against Web site
- Abourezk files libel lawsuit against web site
- Listen to individual stories
- White House Spokesman Ari Fleischer to Resign
- PABAAH : Patriotic Americans Boycotting Anti - American Hollywood

Official Document from the U.S. Senate, Comr
urging President Clinton to take military action
of Mass Destruction

Want to be a GOP Team Leader?

Want to be a part of
ProBush.com?

Email Your First and Last Name

TeamLeader@probush.com

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[PresidentialBus.com](#)

[Will the Real Hussein Please Stand Up?](#)

[2004 Democratic Candidates](#)

[Star Spangled Ice Cream](#)

[Tim Robbins Vs. Baseball Hall of Fame](#)

W

G

[Read A](#)

**PHILLY
SAYS**

**ALL THE NEWS
NOT FIT TO PRINT.**

Dear Starbucks:

As much as I enjoy your coffee, I will not be frequenting
stop playing and promoting Sheryl Crow's music

[Read More](#)

Alvarez Says

Pro



Some Advice for Hollywood

An Ideological Civil War

They Don't Get It, Do They?

Alvarez Action Items

PABAAH & Jon Alveraz on MSNBC!

Pathetic Email

I hate everything about Bush. I think he's an evil idiot. He and his right wing

DNC Gets Desperate

Tree Huggers

Martin Sheen

One Down...

Stupid White Man

Team Le
Literat

Last Phase of Diplomacy (articl

Each member of the Council was given this document (S/2003/232) (f

Hans Blix Report to the U.N. (audi

Military Commission Instruction Effective Im

Leaflet Drops Over Iraq

A Message to Dave Matthews from the editors

Can you hear me now?

"Little Girl"

Conrad Rein Speaks to

Dear Conservative Friends:

The comments made by some of the Hollywood left stated here are despicable, and the video store. Let's show our president, his administration, and our men and women i appreciate them by sending a message to the Hollywood elite that their views about Bu part in a boycott of Hollywood, now through August 31, 2003. Bush supporters, conser traditional values, and anyone else who wants to send a message to Hollywood should during this period. I hope you will join in the fight against anti-Bush, anti-American Hc friends who would be willing to join in this boycott. Let's send Hollywood a message t

Boycott Hollywood

Sincerely, Mary Kirchhoff

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wish to be branded a traitor with
rea

Email sent to ProBush.com is mon

You Might Be a Liberal



- If you can not properly operate a simple ballot, you might be a Palm Beach Liberal.
- If you live in Berkeley, California, you might be a Liberal.
- If you think race or gender should be a factor in hiring people or admitting them (course) you might be a Liberal.
- If you have ever believed anything that came out of Jesse Jackson's mouth, you

Email your favorite Prime Minister or President

Right Wing News

Visit The Official Site for Collectors of Bush campaign buttons, political memorabilia from the Campaigns of President George W. Bush



Clones?

P

[REDACTED]

If you wish to become an Official ProBush.com Patriot
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PatriotList@probush.com

Email sent to ProBush.com is monitored by the U.S. Government

Honorary Patriots



Michael Savage



Glenn Beck



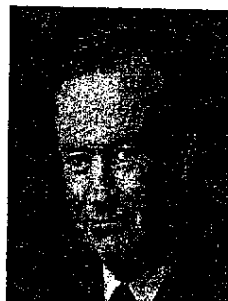
Missa JC



James Woods



Ann Coulter



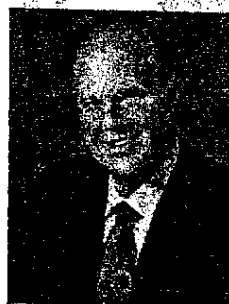
Bill O'Reilly



Sean Hannity



Ken Hamblin



Rush Limbaugh



Bruce Willis



Dennis Miller



Ted Nugent



Clint Black



Mike Gallagher



Sara Evans



Charlie Daniels



Michael Smerconish



Darryl Worley



Tammy Bruce



Tippi Hedren



Toby Keith



Neal Boortz

Add an Honorary Patriot

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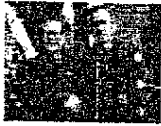
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I pledge Allegiance to the flag of the
United States of America and to the
Republic for which it stands, one
nation under God, indivisible, with
Liberty and Justice for all.

[History of The
Pledge](#)

TRIBUTES

- [U.S. Armed Forces](#)
- [Ari Fleischer](#)
- [Bruce Kieloch](#)
- [Ben Jr.](#)

Traitor List™

Treason: Violation of allegiance toward one's country or
sovereign, especially the betrayal of one's country by waging
war against it or by consciously and purposely acting to aid
its enemies.

Traitor: If you do not support our President's
decisions you are a traitor.

Get to know your traitor!

**Parody. Not to be taken seriously. These "traitors" are not legal
"traitors" of the United States.*



Susan Sarandon

[Top of my list?](#)

Tribunal for you



Sen. John Kerry



Nancy Pelosi

EXHIBIT

6

EXHIBIT

C

- Portland Police Dept.
- Mr. "Algor"

Bush 43 Archives

Official Al Gore
is a Dick Page

The Homeland
Page

Man or Midget?

Know Your Flag
Etiquette

The Portland
Protest

Protest Gallery

Protest Gallery II

Protest Gallery III

Executive Orders

Hans Blix's report
to the U.N.

Past Weekly
Review

Official Iraq
Voting Form

Can of....

Remember...

"Murderous
Tyrant" (10.7.02
address to the
nation)

How dare Mr.
"Algor" criticize
Bush



Ted Kennedy



Sheila Jackson Lee



Ed Norton



Tom Petty



Eddie Vedder



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Michael Moore



Tim Robbins



Dixie Chicks



Seth Goldberg



Fred Durst



Ronald Kuzava



Sheryl Crow



Madonna



Dan Solomon



Jesse L. Jackson Jr



Ray Wirth

Went to college with Ari Fleischer



Taliban Patty

Patty Murray has won the "Tyrant Award"

Congratulations Patty